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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 141

STANLEY H. BORAK,
Petitioner,

—vs—

THE UNITED STATES.

PETITION FOR REHEARING OF APPLICATION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

To the Honorable Justices of the Supreme Court of the United States:

Petitioner respectfully petitions this Court for reconsideration of its decision of October 11, 1948, denying his petition for the issuance of a writ of certiorari to the Court of Claims of the United States in the above-entitled case. The petition should be granted by reason of the following:

THE PETITION SHOULD BE GRANTED UPON THE GROUND STATED IN SCHRIBER-SCHROTH V. CLEVELAND TRUST CO., 305 U. S. 47, 50: BECAUSE THE QUESTION PRESENTED FOR REVIEW CANNOT COME UP IN ANOTHER CIRCUIT, AND IS A QUESTION OF LAW PROPERLY REVIEWABLE BY THIS COURT.

This Court granted certiorari in *Schriber-Schroth* v. *Cleveland Trust Co.*, 305 U. S. 47, 50, stating

> "on a petition for rehearing, litigation elsewhere with a resulting conflict of decision and was improbable, because of the concentration of the automobile industry in the Sixth Circuit."

In the instant case, the divided decision by the Court of Claims involves a question which likewise cannot come up in any other circuit. All suits by officers of the United States for salaries must be brought in the Court of Claims under the "Tucker Act", 28 U. S. C. 41 (20). Therefore, the question in this case as to whether outside earnings of an officer are to be set off against the salary of the office (*United States v. Addison*, 6 Wall. 290, 298), can arise only in that Court. The same question cannot arise in another circuit. Accordingly, the divided decision of the Court of Claims in the instant case, should be reviewed, to settle the law.

Involved in the question presented for review is the scope of two statutes applicable to the Court of Claims, 28 U. S. C. 250 (12 Stat. 765, Mar. 3, 1863), dealing with "set-offs", and 28 U. S. C. 265 (12 Stat. 767; Mar. 3, 1863), concerning "just credits".

The question presented is one which will surely recur in the Court of Claims; indeed, there are cases presently pending in that Court which will be determined by the decision in the instant case.[1]

The law as to whether outside earnings of an officer constitute "just credits" to be offset against the salary of the office, will not be settled until this Court has spoken. Under the rule of the *Schriber-Schroth Co.* case, *supra*, this Court should speak *now*.

THE PETITION SHOULD BE GRANTED TO REVIEW THE DIVIDED OPINION OF A TRIAL COURT, NOT OTHERWISE SUBJECT TO APPELLATE REVIEW.

The shockingly erroneous decision by the Court of Claims in this case was given as a *trial court;* its divided opinion found the majority flouting a rule of law endorsed by this Court, among others; perversely, that Court ignored the Government's concession below that judgment should be for

[1] Among these, and presenting the identical issue for determination, are Kaufman v. United States, No. 47,340, and Goldstein v. United States, No. 47,339.

petitioner in the full amount under the applicable rule of law. Such crass disregard of the settled law by a trial court, requires appellate correction.

Our system of justice contemplates review of the final decision of every trial tribunal on the law. It is recognized as a rule of law that every litigant has the right to one appeal.[2]

The entire rationale of this Court's appellate functioning is to settle the law. To settle the law—for what purpose? Only so that the courts of the United States shall apply uniformly and with fidelity the rules of law so established.

The circuit courts of appeal exist to ensure that the trial courts do not fail to observe the rules of law as settled by this Court, and to offer that detached and objective approach to the issues from which from time to time, the trial court wanders. The circuit courts are *supervisory* courts. The supervisory court over the Court of Claims is *this Court.*

Petitioner asks this Court to grant him the one appellate review to which common concepts of justice and fair play entitle him.

It is clear from the dissenting opinion of Judge Madden, and from the brief of the Government below, that the Court of Claims failed to follow the applicable rule of law; and that, too, in the face of the honest statement in the Government's brief below of the applicable rule. Under the doctrine of *stare decisis et non quieta movere*, this Court should rebuke this case of wilful wandering from that indispensable doctrine.

Congress has not seen fit to interpose between this Court and the Court of Claims any intermediate appellate tribunal. It has granted this Court full power to review decisions of that tribunal. It is this Court's duty to supervise that Court, and to correct its errors. It is incumbent upon this Court to grant with *liberality* certiorari to the Court of

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[2] See Corpus Juris and Corpus Juris Secundum, Appeal and Error, Sec. 1.

Claims where that Court, sitting as *the trial court is itself divided on a question of law.*[3]

Every consideration of law and equity entitles petitioner to review. The writ should issue.

Respectfully submitted,

STANLEY H. BORAK,
Petitioner Pro se.

Certification Under Rule XXXIII.

The undersigned hereby certifies that the foregoing petition is presented in good faith and not for delay, and that the petition is restricted to the grounds specified in Rule XXXIII of this Court.

STANLEY H. BORAK,
Petitioner Pro Se.

[3] This would not unduly burden this Court because the majority of cases in the Court of Claims are concerned with the review of questions of tax law, where the Bureau of Internal Revenue, an administrative body itself having appellate branches, has finally ruled against the taxpayer. Moreover, in tax cases, the same issues do arise in different Circuits.